

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RICHARD D. BAKER,

Plaintiff,

vs.

VOITH FABRICS US SALES, INC., a
foreign corporation,

Defendant.

NO. CV-07-003-JLQ

MEMORANDUM AND OPINION
GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT is Defendant's Motion and Memorandum in Support of Motion for Summary Judgment. (Ct. Rec. 22). Defendant Voith Fabrics US Sales, Inc. is represented by **James M. Shaker, Kimberly D. Bartman, and Michael C. Lord.** Plaintiff Richard H. Baker is represented by **Christine M. Weaver and Crystal B. Spielman.** The motion is opposed by Plaintiff.

BACKGROUND

This is Plaintiff Richard Baker's second action within the past two years against Defendant Voith Fabrics US Sales, Inc., based upon his employment termination, before this court. Plaintiff filed his first action against the Defendant on June 21, 2005, in Superior Court of the State of Washington for Asotin County alleging a violation of Washington's Law Against Discrimination and seeking to obtain long-term disability benefits and short-term salary continuation benefits. Defendant removed the action to this court on July 29, 2005, and it became *Richard H. Baker v. Voith Paper Inc. and Voith Fabrics US Sales Inc.*, CV-05-3070-FVS. On July 7, 2006, almost a year into the matter and just days before the discovery cutoff, Plaintiff motioned to amend his complaint to abandon his disability-discrimination claim and in its place, add a claim under the Employee Retirement Income Security Act of 1974 ("ERISA"). Defendant

opposed the motion, claiming bad faith, tardiness, prejudice, and futility. In reply to Defendant's opposition, Plaintiff modified his request, seeking to add the ERISA claim, yet retain the disability-discrimination claim until the court determined whether the ERISA claim could be brought.

On September 1, 2006, the court denied the motion to amend and provided the Plaintiff with the option to either proceed with the disability-discrimination claim, or move to dismiss the action pursuant to FED. R. CIV. P. 41(a)(2) and file a new action seeking relief under ERISA. Plaintiff chose to file a motion to voluntarily dismiss pursuant to FED R. CIV. P. 41(a)(2). Defendant opposed the motion and requested that Plaintiff's claim be dismissed with prejudice and that Rule 54(d) costs be imposed. On October 16, 2006, the court granted Plaintiff's motion in part. Stating that it was unreasonable for Plaintiff to wait until the discovery cutoff was just days away to request leave to substitute an ERISA claim for his disability-discrimination claim, Judge Van Sickle dismissed his disability-discrimination claim *with prejudice*, although fees and costs were not imposed. Plaintiff did not appeal this dismissal with prejudice.

On November 27, 2006, Plaintiff filed this second action in the Superior Court of the State of Washington for Spokane County, which Defendant again removed to this court. This time, Plaintiff has not brought a claim under ERISA. Rather, Plaintiff brings claims for breach of contract and "retaliation." While the claims are different than those brought in the prior action, the facts alleged in each complaint are nearly identical, as evidenced by the following side-by-side comparison of the Statement of Facts:

June 21, 2005 Complaint	November 27, 2006 Complaint
3.1 All acts by managers, supervisors and employers of Defendants were committed in the course and scope of employment and on behalf of Defendants.	3.1 All act by managers, supervisors and employees of Defendant were committed in the course and scope of employment and on behalf of Defendant.
3.2 Plaintiff was hired by Defendants as a	3.2 Plaintiff was hired by Defendant as a

1 Service Technician on or about May 1,
2 1992.

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4 3.3 In or about January 2005, Plaintiff's
5 physician told him that he could no longer
6 continue in his employment as a Sales
7 Service Technician due to his medically
8 diagnosed conditions of poor circulation
9 and bulging discs.

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11
12 3.4 Plaintiff on several occasions
13 informed his supervisor, Marc Begin, that
14 he was going to have to discontinue his
15 employment and apply for long term
16 disability benefits.

17 3.5 In February 2005, Plaintiff, at the
18 recommendation of his physician,
19 discontinued traveling for two weeks, but
20 continued to perform his non-travel work
21 related duties.

22 3.6 On or about May 6, 2005, Plaintiff's
23 physician drafted a letter to
24 Defendants informing them that Plaintiff
25 had been restricted from returning to work
26 for an unspecified period of time.

27 3.7 Three days later on May 9, 2005,
28 Plaintiff was terminated from his
employment and his eligibility for long
term disability benefits was discontinued

Service Technician on or about May 1,
1992.

3.3 In or about January 2005, Plaintiff's
physician told him that he could no longer
continue in his employment as a Sales
Service Technician due to his medically
diagnosed conditions of poor circulation
and bulging discs.

3.4 As salaried employee, Plaintiff was
entitled to salary continuation and long
term disability benefits.

3.5 Plaintiff on several occasions
informed his supervisor, Marc Begin, that
he was going to have to discontinue his
employment and apply for long term
disability benefits, in addition to receiving
his salary continuation benefits.

3.6 In February 2005, Plaintiff, at the
recommendation of his physician,
discontinued traveling for two weeks, but
continued to perform his non-travel work
related duties.

3.7 On or about May 6, 2005, Plaintiff's
physician drafted a letter to Defendants
informing them that Plaintiff had been
restricted from returning to work for an
unspecified period of time.

3.8 Three days later on May 9, 2005,
Plaintiff was terminated from his
employment and his eligibility for long
term disability benefits was discontinued

as well as his short term salary continuation benefits.	
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SUMMARY JUDGMENT STANDARD

The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the material facts before the court. *Northwest Motorcycle Ass'n v. United States Dept. of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). The moving party is entitled to summary judgment when, viewing the evidence and the inferences arising therefrom in the light most favorable to the nonmoving party, there are no genuine issues of material fact in dispute. FED. R. CIV. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). While the moving party does not have to disprove matters on which the opponent will bear the burden of proof at trial, they nonetheless bear the burden of producing evidence that negates an essential element of the opposing party's claim and the ultimate burden of persuading the court that there is no genuine issue of material fact. *Nissan Fire & Marine Ins. Co. v. Fritz Companies*, 210 F.3d 1099, 1102 (9th Cir. 2000).

Once the moving party has carried its burden, the opponent must do more than simply show there is some metaphysical doubt as to the material facts. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1975). In meeting this burden, the "adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." *Miller v. Glenn Miller Productions*, 454 F.3d 975, 987 (9th Cir. 2006) (quoting FED. R. CIV. P. 56(e)).

ANALYSIS

I. Res Judicata

The doctrine of res judicata "relieve[s] parties of the costs and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication." *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d

1 985, 988 (9th Cir. 2005) (citation omitted). The doctrine applies when an earlier
2 adjudication (1) reached a final judgment on the merits (2) involved the same cause of
3 action or “claim,” and (3) involved the same parties or privies. *Leon v. IDX Sys. Corp.*,
4 464 F.3d 951, 962 (9th Cir. 2006). It appears that for this action, all three elements are
5 met.

6 **A. Same Parties:**

7 It is undisputed that the parties to this action, Plaintiff Richard H. Baker and
8 Defendant Voith Fabric US Sales, Inc., are the same parties that appeared in the first
9 action.

10 **B. Identity of Claims:**

11 To determine whether successive lawsuits involve an identity of claims for res
12 judicata purposes, courts in the Ninth Circuit consider four criteria: (1) whether the two
13 suits arise out of the same transactional nucleus of facts; (2) whether rights or interests
14 established in the prior judgment would be destroyed or impaired by prosecution of the
15 second action; (3) whether the two suits involve infringement of the same right; and (4)
16 whether substantially the same evidence is presented in the two actions. *Adams v. State*
17 *of Cal. Dept. of Health Servs.*, – F.3d –, 2007 WL 1309812, *4 (9th Cir. 2007)
18 *withdrawing and replacing* 2007 WL 446582 (citing *Costantini v. Trans World Airline*,
19 681 F.2d 1199, 1201-02 (9th Cir. 1982)). Although no single criterion can decide every
20 res judicata question and these factors are not applied mechanistically, “[t]he central
21 criterion in determining whether there is an identity of claims between the first and
22 second adjudications is ‘whether the two suits arise from the same transactional nucleus
23 of facts.’” *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001)
24 (quoting *Frank v. United Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir.2000)).

25 **i. Same transactional nucleus of facts:**

26 To determine whether two actions are part of the same transaction or series of
27 transactions, courts apply a transactional test and consider whether the actions are
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1 “related to the same set of facts and whether they could conveniently be tried together.”
2 *Mpoyo*, 430 F.3d at 986 (quoting *W. Sys., Inc. v. Ulloa*, 958 F.2d 864, 871 (9th Cir.
3 1992)). *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985 (9th Cir. 2005) illustrates
4 how the Ninth Circuit applies this transactional test. In that action, the plaintiff had
5 brought a Title VII action against his former employer alleging “his supervisor harassed
6 and defamed him, conspired against him during his employment, destroyed his reputation
7 by ordering him to leave the building in a humiliating way, framed him for removing
8 computer program materials, conspired to fire him, conspired to create conflicts between
9 him and other employees and retaliated against him for reporting racial epithets.” *Id.* at
10 986. Then two years into the action, after the completion of discovery, expert witness
11 disclosures time had passed, and summary judgment motions were fully briefed, the
12 plaintiff sought leave to amend his complaint to include Family Medical Leave Act
13 (“FMLA”) and Fair Labor Standards Act (“FLSA”) claims, which the district court
14 denied because it would have been “unfairly prejudicial” and the “delay was unjustified.”
15 *Id.* Ultimately, the district court granted partial summary judgment in favor of defendant
16 on the Title VII claim and it was upheld on appeal. *Id.* While on appeal, however,
17 plaintiff filed a new action bringing the same FMLA and FLSA claims he had not been
18 permitted to add by amending his complaint. *Id.* at 986-87 The district court dismissed
19 the FMLA and FLSA claims based upon res judicata, and plaintiff appealed. On appeal,
20 the Ninth Circuit determined that plaintiff’s subsequent action arose from the same
21 transaction, or series of transactions as the original action because all the claims arose
22 from the defendant employer’s conduct while plaintiff was an employee and from the
23 events leading to his termination. *Id.* As such, “the Title VII, FLSA and FMLA claims
24 form a convenient trial unit that discloses a cohesive narrative of an employee-employer
25 relationship and controversial termination.” *Id.*

26 Here, Plaintiff is attempting to bring new claims based upon the same conduct or
27 series of conduct alleged in the prior action, as evidenced by the factual allegation
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1 sections of the complaints remaining substantially unchanged. Despite Plaintiff's attempt
2 to describe the disability-discrimination claim as coming from overtly discriminatory
3 actions, and the breach of contract claim coming from a failure to act, the Plaintiff is
4 essentially complaining of the same conduct. Plaintiff continues to allege that after
5 reporting his medical condition to his supervisor, which restricted his ability to work, the
6 Defendant wrongfully terminated his employment, and as a result, Plaintiff seeks to
7 recover the value of his short term disability benefits and salary continuation benefits,
8 along with attorneys' fees and costs. Accordingly, this subsequent action arises from the
9 same transaction, or series of transactions as the original action, and therefore satisfies the
10 first criterion.

11 **ii. Other criteria:**

12 As for the second criterion, this action would impair the Defendant's freedom from
13 liability as established in the prior action before the court. *See Costantini*, 681 F.2d at
14 1202 (considering the right or interest established in a prior judgment to be the freedom
15 from liability). The last two criteria, however, are not conclusive. Whether the two
16 actions involve infringement of the same right depends upon how broadly or narrowly the
17 court looks at the right. Obviously, if the right is considered from the level of each claim,
18 the right to be free from being discriminated against due to a disability is different from
19 the right to enjoy the benefit of a contract or the right to engage in statutorily protected
20 activities without fear of retaliation. *See Mpoyo*, 430 F.3d at 987 (stating that Title VII,
21 FMLA, and FLSA arguably address different particular rights). However, if viewed more
22 broadly, Plaintiff is claiming he has a right to receive his short term disability benefits
23 and salary continuation benefits after being wrongfully terminated due to a medical
24 condition that required the Plaintiff to take a leave of absence. *See Durney v. WaveCrest*
25 *Lab.*, 441 F. Supp. 2d 1055, 1065 (N.D. Cal. 2005) (describing how "different legal
26 rights might be involved (*e.g.* right to intellectual property protected by copyright versus
27 proprietary interest in the intellectual property), [but] at bottom, [Plaintiff's] general
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1 ownership interest in the work is what is at issue”). Finally, as for the fourth criterion,
2 some of the evidence would certainly overlap because Plaintiff “disputes a single act of
3 termination stemming from a course of employment” and the withholding of benefits.
4 *Mpoyo*, 430 F. 3d at 987. Yet, as Plaintiff points out, because the claims are different
5 “other evidence supporting the two actions would likely be distinct.” *Id.*

6 Ultimately, while the latter three criteria may not yield a clear outcome, the Ninth
7 Circuit has often held the “same transactional nucleus of fact” criterion to be outcome
8 determinative and has stated that it is appropriate to weigh it even more heavily where the
9 underlying action’s “denial of leave to amend was based on unjustified untimeliness on
10 the part of the plaintiff that would cause unfair prejudice to the defendant.” *Id.* at 988.
11 Therefore, because this action clearly involves the same transactional nucleus of facts as
12 the prior action, the court need not evaluate the latter three criteria to determine that the
13 identity of claims element is satisfied.

14 **C. Final Judgment on the Merits:**

15 This element raises the issue of whether the Order entered in the prior action
16 dismissing Plaintiff’s disability-discrimination claim with prejudice operated as a “final
17 judgment on the merits” for purposes of res judicata. Plaintiff argues that this element is
18 “claim-specific” and therefore, rather than precluding claims that could have been raised
19 in a prior action, res judicata only precludes claims that were adjudicated to a final
20 judgment on their merits. To support this position, Plaintiff cites *Hells Canyon Pres.*
21 *Council v. U.S. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005) where the Ninth Circuit
22 emphasized the following language from *Baker ex rel. Thomas v. Gen. Motors Corp.*, 522
23 U.S. 233 n. 5 (1998): “res judicata doctrine focuses on an identity of *claims*, specifying
24 that ‘a valid final adjudication of a *claim* precludes a second action on *that claim* or any
25 part of it.’” (emphasis added in original). From that, the Court stated that the “‘final
26 judgment’ prong of the res judicata test is claim-specific.” *Hells Canyon*, 403 F.3d at
27 686. Then, applying this standard, the Court determined that because the prior action’s
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1 Wilderness Act claim was voluntarily dismissed prior to the action's final dismissal, there
2 was "no final judgment on the merits with regard to [the Wilderness Act] claim." *Id.* at
3 687-90.

4 The overwhelming weight of Ninth Circuit precedent stands for the proposition
5 that res judicata bars not only all claims that were actually litigated, but also claims that
6 could have been asserted in the prior action, as long as the prior action resulted in a "final
7 judgment on the merits." *See Tahoe Sierra Preservation Council, Inc. v. Tahoe Reg'l*
8 *Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003) (stating that "[n]ewly articulated
9 claims based on the same nucleus of facts may still be subject to a res judicata finding if
10 the claims could have been brought in the earlier action"); *Stewart v. U.S. Bancorp*, 297
11 F.3d 953, 956 (9th Cir. 2002) (stating that "res judicata, or claim preclusion, prohibits
12 lawsuits on 'any claims that were raised or *could have been raised*' in a prior action");
13 *see also Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 396 (1981) (stating that
14 "[a] final judgment on the merits of an action precludes the parties or their privies from
15 relitigating issues that were or could have been raised in that action"). In fact, just
16 months after *Hells Canyon*, the Ninth Circuit held that the denial of leave to amend a
17 complaint to add claims due to dilatoriness in a prior action does not prevent application
18 of res judicata in a subsequent action where the plaintiff attempts to bring those same
19 claims. *Mpoyo*, 430 F.3d at 988-89. The court explained that "[d]ifferent theories
20 supporting the same claim for relief must be brought in the initial action." *Id.* at 988
21 (quoting *Ulloa*, 958 F.2d at 871). "Permitting these later-filed claims to proceed would
22 create incentive for plaintiffs to hold back claims and have a second adjudication." *Id.* In
23 so holding, the Court applied the "final judgment on the merits" element to the prior
24 action instead of applying it as "claim-specific" requirement.

25 Therefore, the issue is whether the prior action resulted in a "final judgment on the
26 merits," and is not whether Plaintiff's current claims for breach of contract and retaliation
27 have been previously adjudicated. In denying the motion to amend the complaint in the
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1 prior action, the court invited the Plaintiff to move to dismiss the action pursuant to FED.
2 R. Civ. P. 41(a)(2) and file a new action seeking relief under ERISA. However, when
3 Plaintiff made such a motion, the court dismissed the disability-discrimination claim *with*
4 *prejudice*. Typically, a “dismissal with prejudice” is a “final judgment on the merits,”
5 unless otherwise specified. *See Stewart*, 297 F.3d at 956 (stating that “[t]he phrase ‘final
6 judgment on the merits’ is often used interchangeably with ‘dismissal with prejudice’”);
7 *In re Schimmels*, 127 F.3d 875, 884 (9th Cir. 1997) (stating that “[a]n involuntary
8 dismissal generally acts as a judgment on the merits for the purposes of res judicata,
9 regardless of whether the dismissal results from procedural error or from the court’s
10 considered examination of the plaintiff’s substantive claims”); *Cf. Owens*, 244 F.3d at
11 714 (dismissal for failure to prosecute acts was an adjudication on the merits).
12 Accordingly, the prior action resulted in a final judgment on the merits thereby satisfying
13 res judicata’s final element.

14 CONCLUSION

15 In sum, because the Plaintiff was given a full and fair opportunity to raise and
16 litigate these claims in his prior action, the application of res judicata to dismiss the
17 Plaintiff’s present Complaint has not unfairly deprived the Plaintiff of his day in court.
18 *Adams*, 2007 WL at *8. Plaintiff was not barred from bringing the breach of contract or
19 retaliation claim in the first action. The Plaintiff’s motion for leave to amend was denied
20 and his claim dismissed with prejudice because his motions were untimely and
21 prejudicial; the parties were nearly one year into the action and the discovery period had
22 nearly expired. Accordingly, Defendant’s Motion for Summary Judgment is
23 **GRANTED.**

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27 **IT IS SO ORDERED.** The Clerk is directed to enter this Order, enter judgment
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1 dismissing the Complaint and the claims therein with prejudice, furnish copies to counsel,
2 and thereafter close this file.

3 **DATED** this 24th day of May 2007.

4 s/ Justin L. Quackenbush
5 JUSTIN L. QUACKENBUSH
6 SENIOR UNITED STATES DISTRICT JUDGE
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